First respondent had appeared before the Industrial Court and the Industrial Court had fixed the case for mention pending the outcome of the present application in this Court. This judgment should serve as a direction to the Industrial Court to proceed to hear and determine the question whether the dispute is a trade dispute.

Application dismissed.

Solicitors: *Shook Lin & Bok.*

ABDUL RAHIM BIN SIAN v. MESDI BIN WARIAN

[O.C.J. (Shankar J.) September 18, 1984]
[Muar – Civil Suit No. 44 of 1977]

Damages – Quantum – Loss of sight of left eye – Plaintiff slashed by defendant – Award for exemplary damages given per incuriam – Categories for exemplary damages very narrow.

The plaintiff, an odd job labourer, was slashed by the defendant with a parang. He sustained serious injuries and lost sight of his left eye.

The defendant was charged with a criminal offence arising out of the said assault. He pleaded guilty and was imprisoned for 3½ years.

The plaintiff claimed that he earned an average of $300.00 per month. Since his employment was of a casual nature, the parties agreed that $150.00 per month would be a fair figure for the purpose of computing the sum to be awarded by way of loss of earnings and loss of earning capacity.

The severity of the attack which was unprovoked led the court to award exemplary damages for the sum of $15,000.00 following the case of *Loudon* v. *Ryder*[1] as authority for the proposition that this was a proper case in which exemplary damages should be awarded. However, on re-consideration,

Held: (1) the case of *Loudon* v. *Ryder*[1] was overruled by *Rookes* v. *Barnard*[2]. The categories in which exemplary damages may be awarded are very narrow. The present case was not within the permitted categories and the award of $15,000.00 for exemplary damages was clearly *per incuriam;*

(2) the court revised its order and ordered the defendant to pay the plaintiff the sum of $25,000.00 for general damages and $10,000.00 for special damages and for loss of future earnings and earning capacity. The plaintiff was also awarded $2,000.00 in costs inclusive of disbursements.

Cases referred to:

(1) *Loudon* v. *Ryder* [1953] 2 Q.B. 202; [1953] 1 All E.R. 74.
(2) *Rookes* v. *Barnard* [1964] A.C. 1129, 1229.

CIVIL SUIT.

C.K.G. Pillay for the plaintiff.
Pritam Singh Brrard for the defendant.

Cur. Adv. Vult.

Shankar J.: Abdul Rahim bin Sian, the Plaintiff in this case, was slashed by the Defendant, Mesdi bin Warian on April 4, 1973 at about 8.00 a.m. with a parang. He sustained serious injuries and lost the sight of his left eye.

When the case came on for hearing, the Defendant was absent. The Plaintiff's evidence as to what happened was unchallenged. It was to the following effect. On the day in question, the Plaintiff had gone to visit his friend Mastor bin Mesdi at his house. This Mastor was the son of the Defendant and a good friend of the Plaintiff. After the visit and when the Plaintiff was on his way out, the Defendant attacked him without any warning with a parang. He was slashed on the head. The scar was still visible and extended from just above the left temple and came diagonally across the left eye. The Plaintiff put up his right hand to ward off the blow and sustained injuries on his hand also. According to the Plaintiff there was no previous quarrel or misunderstanding between the parties and the assault was completely unprovoked.

In his evidence-in-chief the Plaintiff confirmed that all injuries and disabilities recited in the Statement of Claim were true. Without going into great detail, suffice it to say that the injury to the head cut through the skull into the brain. The left eye ball was split into 2 unequal portions. The severity of the attack was such that it is a credit to the doctors who attended to the Plaintiff that he is still alive.

The Defendant was charged with a criminal offence arising out of this assault. We are told that he pleaded guilty and was imprisoned for 3½ years.

At the time of this attack the Plaintiff was an odd-job labourer on pineapple plantations. He claims that he earned an average of $300.00 per month. Since his employment was of a casual nature, it was agreed between the parties during cross-examination that $150 per month would be a fair figure for the purpose of computing the sum to be awarded by way of loss of earnings and loss of earning capacity.

There were some small items of special damage

for actual expenditure incurred in travelling expenses to the hospital which were not proved.

In the course of his submissions, Mr. Pritam Singh, Counsel for the Defendant, conceded the issue of liability and it was suggested that for general damages the Plaintiff should be awarded $25,000 and for special damages by way of loss of actual earnings, loss of future earnings, and for loss of earning capacity a sum of $10,000 would be fair. Mr. C.K.G. Pillay was in agreement with these figures. I therefore awarded the Plaintiff $25,000 by way of general damages and $10,000 by way of special damages for actual loss of earnings and also for damages for loss of earning capacity and loss of future earnings.

The severity of this unprovoked attack on the Plaintiff led me to the view that this was an appropriate case for exemplary damages. I referred Counsel to the case of *Loudon* v. *Ryder*[1] as authority for the proposition that this was a proper case in which exemplary damages should be awarded. Both Counsel, out of deference to me, left the issue of exemplary damages to the Court. I then proceeded to award $15,000 as exemplary damages. I did so because I felt that this was a clear case where the Defendant should be punished for his conduct, and others who are minded to take the law into their hands should be deterred from inflicting this kind of violence. I also felt obliged to vindicate the strength of the law.

At the time this judgment was dictated the Order of the Court had not yet been extracted and I had an opportunity of re-considering the matter. It come to my notice that the case of *Loudon* v. *Ryder* was overruled by *Rookes* v. *Barnard*[2].

It would appear that the categories in which exemplary damages may be awarded are very narrow. Reference may be made to paragraph 119 of the *Halsbury's* Laws of England Vol. 12 at page 474 (4th Edition). The present case is not within the permitted categories and the award of $15,000 for exemplary damages was clearly *per incuriam*.

Accordingly I revise my order and hereby adjudge and order that the defendant in this case do only pay the Plaintiff the sum of $25,000 for general damages and $10,000 for special damages and for loss of future earnings and earning capacity. As for interest, I order that the same should run at 6% per annum from June 8, 1982 up to realisation. The Plaintiff will also have the sum of $2,000 in costs inclusive of disbursements.

Order accordingly.

Solicitors: *Hassan Yunos & Co.; Syarikat Pritam Singh.*

YEOH BAN ENG v. PENANG CHINESE SCHOOL TEACHERS CO-OPERATIVE SOCIETY LTD

[O.C.J. (Edgar Joseph Jr. J.) September 11, 1984]
[Penang – Civil Suit No. 45 of 1984]

Societies – Co-operative Society – Plaintiff suspended from the Committee – Rules of natural justice – Injunction against the Society – Application to discharge injunction – Striking out writ and statement of claim – No reasonable cause of action – Whether plain and obvious case – Balance of convenience. Co-operative Societies Act, 1948, s. 49 – Co-operative Societies Rules, 1949, r. 11B.

In this case, the plaintiff since 1971 has been a member of the defendant Society and served on its Committee for about 10 years. At a general meeting of the Society held on October 30, 1983, a resolution was passed making it a condition precedent for all applicants for membership to the Society to participate in the Society's Group Life Insurance Scheme under a policy issued by an assurance company. The plaintiff and some Committee members were unhappy about this resolution. The plaintiff and 69 ordinary members of the Society wrote to the Registrar-General of Co-operative Societies seeking his guidance. The Chairman of the Society was not happy by the course taken by the plaintiff who was called upon to explain his action in a meeting of the Committee of the Society held on December 3, 1983. The plaintiff complained he was taken by surprise since no prior notice of any alleged misconduct was given to him. The treasurer then moved a motion, seconded by a member of the Committee, for the plaintiff's suspension. At this point of time the plaintiff withdrew from the meeting. On or about December 6, 1983, he received a letter from the Committee stating that he had been suspended from the Committee as from December 3, 1983 up to the next general meeting. He complained that he was never given an opportunity to make a plea in mitigation of punishment.

The plaintiff obtained an *ex parte* interlocutory injunction restraining the Society from enforcing the decision of the Committee made on December 3, 1983. The Society made the present application to dissolve that injunction on the grounds that the writ of summons and statement of claim should be struck out as disclosing no reasonable cause of action or as being frivolous or vexatious or an abuse of the process of the court.

Held: (1) it is only in plain and obvious cases that the court will exercise its jurisdiction to strike out a writ of summons or statement of claim on the above grounds;

(2) the issues which arose for decision were complex and not free from difficulty and were eminently triable. There was no question of this being a clear and obvious case for the exercise of the jurisdiction to strike out;